



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings : X

- against - : FINAL

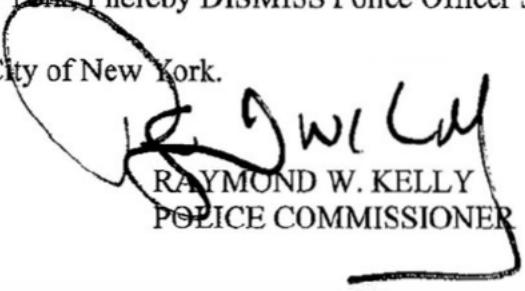
Police Officer Stanley Samedy : ORDER

Tax Registry No. 940694 : OF

Housing Borough Brooklyn : DISMISSAL

Police Officer Stanley Samedy, Tax Registry No. 940694, Shield No. 7449, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 85346/09 as set forth on P.D. 468-121, dated June 5, 2009, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Stanley Samedy from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: @ 0001HRS on November 3, 2010



POLICE DEPARTMENT

August 10, 2010

-----X-----
In the Matter of the Charges and Specifications : Case No. 85346/09

- against - :

Police Officer Stanley Samedy :

Tax Registry No. 940694 :

Housing Borough Brooklyn :

-----X-----
At: Police Headquarters
 One Police Plaza
 New York, New York 10038

Before: Honorable Martin G. Karopkin
 Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Mark Berger, Esq.
 Department Advocate's Office
 One Police Plaza
 New York, New York 10038

For the Respondent: Marvyn M. Kornberg, Esq.
 125-10 Queens Boulevard Suite 12
 New York, New York 11415

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on June 16, 2010 and June 17, 2010, charged with the following:

1. Said Police Officer Stanley Samedy, assigned to Housing Borough Brooklyn, while on duty, on or about July 10, 2008, in Queens County, did fail and neglect to render police services in said officer's assigned area, to wit: said officer failed to properly assist his partner, Police Officer Michael Avery, during a confrontation with an armed male, identity known to the Department.

P.G. 202-21, Page 1, Paragraph 8 **POLICE OFICER, DUTIES AND RESPONSIBILITIES**

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and the Respondent was represented by Marvyn M. Kornberg, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Jason Madrid, Erika Rodriguez and Police Officer Michael Avery as witnesses.

Jason Madrid

Madrid testified that he is an exterminator. He recalled the events of July 10, 2008, and said that on that date, he was visiting his sister's apartment on [REDACTED]

in [REDACTED], Queens after having gone to visit the pool with their children. Madrid testified that his sister lived on the third floor of her apartment building. Madrid identified Department's Exhibit (DX) 1 as a diagram indicating the layout of the rooms and walls of his sister's apartment, which was not to scale. Madrid testified that present in the apartment were: himself; his brother, [REDACTED] ("[REDACTED]"); his sister, [REDACTED] ("Eunice"); his girlfriend, Erika Rodriguez; and Rodriguez's two children. He was at his sister's apartment for a social visit.

Madrid testified that after returning from the pool, there was an argument between [REDACTED] and [REDACTED] because [REDACTED] had been staying with [REDACTED] for the past two weeks and she "just got tired of his attitude.... just differences between brothers and sisters." Madrid said that the argument then escalated. Madrid explained that while the argument was taking place in the living room, [REDACTED] walked away from [REDACTED] and into the kitchen. Madrid testified that [REDACTED] sat down at a table and looked out the window. Then [REDACTED] said something towards [REDACTED] whereupon [REDACTED] replied something back from the kitchen. [REDACTED] then went into the kitchen and put one arm around [REDACTED]'s neck and he had a knife in his other hand.

Madrid said that he saw [REDACTED] do this from where he was standing in the living room and thus, went to restrain him. At this point the police had not arrived yet. Madrid testified that he was able to put his arm on [REDACTED]'s arm, and his hand on [REDACTED]'s wrist to restrain [REDACTED] in case he tried to swing the knife during the struggle. He was able to pin his brother against the wall and then his girlfriend, Rodriguez, came and took the knife away.

Madrid said that at that point, [REDACTED] called out that she had notified the police

and said, "█████, you better get out of here." The police arrived approximately five minutes later; however, during this time █████ saw another object on top of the refrigerator, which he tried to grab. This resulted in another shoving match with Madrid. Madrid said that he managed to push █████ over the kitchen table, breaking the table under him. █████ then picked up one of the table legs on the floor and attempted to strike Madrid with it. Madrid stated that Rodriguez then grabbed the table leg and they told █████ to calm down. █████ continued to "talk garbage," but walked out into the living room. Madrid said that █████ grabbed his bags and was going to go for a walk to "steam off" when they heard a banging on the door.

Madrid said that █████ answered the door whereupon he saw Police Officer Avery walk in. There was another officer with Avery, but Madrid did not see him come in.¹ Madrid stated that Avery was a Caucasian officer. Madrid saw the other officer, the Respondent, peek his head in, but did not see him physically enter the apartment.² Madrid stated that as Avery came down the hallway, █████ asked him what he was doing there. Avery replied that he had been notified of a disturbance. █████ then backed up towards the window, but then somehow had a knife in his hand again. █████ did not have a knife when Avery first walked in. Avery then ordered █████ to put the knife down. Madrid testified that █████ replied to Avery that he would put his knife down if Avery put his gun down.

Madrid testified that he then physically intervened in the stand-off by putting

¹ Madrid identified on DX 1 where he was located inside the apartment when the police first arrived with a red number one with a circle around it. Madrid also identified on DX 1 where █████ was located when the police first arrived with a red number two with a circle around it.

² Madrid identified on DX 1 the furthest point in the apartment that he saw the Respondent enter with a red number three with a circle around it. The mark indicated that the Respondent had not entered the apartment.

himself in between Avery and [REDACTED]. Madrid explained that he did this because his brother was not in the right state of mind and that he had never been put in this kind of predicament before. Madrid started to tell his brother to "just relax" and to put the knife down. Madrid said that he then grabbed [REDACTED], but [REDACTED] would not release the knife. During this struggle, Avery pulled out his "mace" and sprayed it towards Madrid and his brother. Madrid said that the "mace" had hit [REDACTED] in the eyes, but some had also hit him.

As a result, Madrid said he was no longer able to hold on to his brother and so he moved away from him. [REDACTED] did not go towards or try to attack anybody, but [REDACTED] could not see where he was walking. Madrid stated that [REDACTED] still was holding the knife in Avery's direction and Avery fired one shot at [REDACTED]. After being shot, [REDACTED] fell to one knee, but the knife was still in his hands. Avery then came and kicked the knife out of [REDACTED]'s hand. Madrid stated that his sister "was going hysterical" and ran into her bedroom.

Madrid testified that Avery was asking for help to arrest [REDACTED]. Madrid asked Avery if he wanted him to help; Avery replied, yes. Madrid testified that nobody was helping Avery when he asked for help. Madrid said that Avery had his brother's right arm handcuffed, but the left arm was under him. Madrid helped drag [REDACTED]'s left arm from under him to allow Avery to put the other handcuff on. Madrid said that children were in the playroom during all of this (DX 1).

Madrid testified that before his brother was handcuffed, the Respondent had not entered the apartment. After [REDACTED] was handcuffed, Avery sat down on the floor next to [REDACTED]. The Respondent then came in with other officers whereupon Avery began yelling

at the Respondent, "How can you do this to me? Where were you?" Madrid said that the officers then tried to calm everyone down and get everyone out the apartment. Madrid's girlfriend put a quilt over the children's heads so they would not see anything and then they all walked out. Madrid declared that he had no ill will towards Avery for shooting his brother. Madrid explained that when he came out, he saw Avery crying in the staircase. Avery then said to Madrid, "I'm sorry, I didn't mean to shoot your brother, but I had to."

During cross-examination, Madrid acknowledged that he went to a pool and the family came home, whereupon his brother and sister got into an argument. He also acknowledged that [REDACTED] had been drinking. Furthermore, he acknowledged that the argument that took place between his sister and brother was because [REDACTED] was drinking with his medication. This combination causes [REDACTED] to have an angry reaction. Madrid said that when his sister went into the kitchen during the argument, [REDACTED] followed her. Madrid stated at this point he got up and peeked inside the kitchen where he saw [REDACTED] with his sister's neck in the crook of his elbow and forearm; he also had a knife in his other hand with that arm down.

Madrid said that he then came from behind his brother and restrained his left arm and also grabbed him around the neck. Madrid acknowledged that he and his brother got into a "shoving match" in the kitchen and he was able to get his hand around [REDACTED]'s wrist that was holding the knife and pin it against the wall. He acknowledged that his girlfriend came in and took the knife out of his hand. Madrid again explained that his brother then reached for another object on top of the refrigerator. As [REDACTED] reached for the object, Madrid pushed [REDACTED] towards the kitchen table, which broke under him.

[REDACTED] then grabbed a table leg and tried to use it as a weapon against him. Rodriguez then grabbed another table leg and both she and Madrid told [REDACTED] to calm down. Madrid acknowledged that [REDACTED] then began to calm down.

Madrid said that he did not live in the apartment. Madrid acknowledged that the building is a three-story apartment building where multiple tenants live on each floor and that they all come in through the same front door. The door was a magnetically-locked door that required one to have a key or be buzzed in; however, at the time of the incident, the magnetic lock was not working so the door was able to open and close without a key. Madrid acknowledged that on the day of the incident there was open access to the apartment building.

Madrid acknowledged that the police knocked on the door about five minutes after the table broke. In those five minutes, [REDACTED] calmed down and grabbed his belongings to "go out to steam off, to go take a walk." [REDACTED] was staying in the apartment for about two weeks. Madrid acknowledged that as [REDACTED] was leaving, one officer (Avery) entered the apartment.

Madrid stated that Avery came in and walked down the hallway and ended up almost shoulder to shoulder with him. Madrid said when Avery reached him, he moved towards his brother, who was standing near a window. He said from that vantage point he could see who did and did not enter the apartment.³ He agreed that the hallway was approximately 15 feet. Madrid acknowledged that when the officer came in, [REDACTED] backed up towards the window. Avery backed up towards the area between the entrance of the kitchen and the closet. Madrid acknowledged that the last time he saw the

³ Madrid moved from the marked red number one on DX 1 to the marked red number two on DX 1.

Respondent was when he stuck his head in through the apartment entrance.⁴ From his position by the window, which is where he had moved to when Avery had walked in, Madrid could not see what was going on in the hallway nor if anyone was in the hallway.

Madrid acknowledged that Avery was by the kitchen when [REDACTED] picked up the knife by the window. He acknowledged that he was still by his brother when [REDACTED] picked up the knife. Madrid acknowledged that Avery told [REDACTED] to put the knife down when his brother picked it up. Madrid said that his brother did not put the knife down, but said to Avery, "I will put my knife down if you put your gun down." Madrid could not remember what Avery replied back to [REDACTED]. Madrid acknowledged that Avery had his gun out. Madrid said at this point he turned to face his brother and was looking at him at an angle; Avery was behind Madrid. Madrid admitted that he had said to Avery, "Don't shoot my brother, I can calm him down. Please, don't shoot my brother." Madrid was in front of his brother for two to three seconds.

Madrid admitted that he and his brother started grappling with one another in the living room. Madrid explained that he tried to take the knife from [REDACTED] and they ended up in "an arm tugging" match. Madrid acknowledged that he was not able to take the knife away. Madrid said that [REDACTED] did not push him aside. During this time, [REDACTED] had not been "maced" yet. Madrid agreed that there came a point when Avery "maced"

[REDACTED] Madrid acknowledged that when the "macing" occurred, Avery was still by the kitchen. Madrid acknowledged that during the "macing," he and his brother were next to each other by the window. Madrid admitted that he still could not see down the hallway at this point. Madrid agreed that Avery "maced" his brother from across the room.

When [REDACTED] was "maced," he grabbed his eyes and took two steps to the side, and one

⁴ Position number three on DX 1.

step towards Avery because he could not see where he was going.

Madrid acknowledged that Avery shot [REDACTED] from across the room. Madrid admitted that at that point he did not see what was going on in the hallway. Madrid further admitted that while this was occurring, he did not know where his sister was in the room, but believed that his girlfriend was in the room by the playroom because the children were there. Madrid was not quite sure because he was concentrating on [REDACTED] and Avery. Moreover, Madrid admitted that he was not concentrating on where the Respondent was because he was busy dealing with Avery.

Madrid acknowledged that on July 10, 2008 he was interviewed on tape. Madrid said he could not recall if he had made the following statement:

Sergeant Steele: Which officer sprayed with the mace?

Mr. Madrid: The white officer, and from that point on, the other officer, I didn't see him. The only thing I was just concentrating on those two and my sister and Erika were towards the kitchen and the bathroom.⁵

Madrid agreed that his recollection of the incident was better at the time of the incident than on the day of his testimony. Madrid did not see the Respondent after the "macing." He disputed the idea that he was able to observe the Respondent up until the "macing" and that it was not until after the "macing" that he lost sight of the Respondent.

Madrid acknowledged that other officers came into the apartment. Madrid said that he was by the couch in the living room.⁶ When the other officers arrived, Madrid was helping Avery handcuff his brother. Madrid said when the officers came into the apartment, he was standing and [REDACTED] was on the floor, face down and handcuffed. The other responding police officers did not partake in the handcuffing of his brother. Madrid

⁵ The Department stipulated that page 7 of the interview transcript was read correctly to the witness by the Respondent.

⁶ The couch being referred to is the one on the left in DX 1.

had no idea what had happened to the knife that [REDACTED] had. He did not know if the Respondent had picked up the knife. Madrid also did not know how the other officers gained access to the building. Madrid reiterated that on that day, the door could be yanked open.

On redirect examination, Madrid said that the apartment where the incident occurred is not large. The playroom was very close to the bathroom. The bathroom and playroom have an adjoining wall. Madrid said that when he heard Avery ask for help, he was the only one there to provide help. Madrid said that while he was not able to see in the hallway when Avery arrived, he would have been able to see if the Respondent was in the kitchen area with Avery. Madrid was "positive [the Respondent] was not in the apartment during the whole struggle."

Erika Rodriguez

Rodriguez testified that she was at the apartment where the incident occurred on July 10, 2008. She said that the apartment belonged to her sister-in-law, [REDACTED]. Rodriguez declared that she has been there over a hundred times. On that day, Rodriguez had arrived at the apartment after having visited the pool. Inside the apartment with her were: her children, Madrid, [REDACTED], and [REDACTED].

Rodriguez said that [REDACTED] and [REDACTED] got into an argument, but was not clear what the argument was about. [REDACTED] was not himself because he had been drinking while on his medication. The argument then escalated from mere words to physical violence. Rodriguez explained that [REDACTED] was in the kitchen, sitting by the window. [REDACTED] then went up to [REDACTED] and put a knife next to her neck. Madrid then got up and removed the

knife from [REDACTED]'s hand whereupon they started fighting over the knife in the kitchen.

Madrid then threw [REDACTED] into the kitchen table.

Rodriguez stated that [REDACTED] dialed 911, but she did not see her dial because she was in the kitchen and [REDACTED] called from the living room. Rodriguez learned that [REDACTED] had called 911 because [REDACTED] told her she did. After that, everybody calmed down. [REDACTED] collected his belongings and a shopping bag and was about to walk out the door when Avery entered into the apartment.⁷ Rodriguez stated that the Respondent was with Avery, but he did not come in the Respondent only stuck his head in the door.⁸ Avery walked in and positioned himself next to the sofa, near the kitchen door.⁹ [REDACTED] did not have a knife when Avery came in. [REDACTED] backed himself into a corner and told Avery to leave. [REDACTED] began walking towards Avery and then [REDACTED] pulled out a knife. Rodriguez testified that she had "no idea where he pulled the knife out of because before that [they] took the knives away from him."

Rodriguez said that Madrid then positioned himself in front of [REDACTED] and tried to take the knife away. At this point, Avery had drawn his firearm. While all this was occurring Rodriguez had not moved from her original location. She did not want to move because she did not want to put herself in the line of fire so she remained where she was and observed what was going on. From where Rodriguez was standing she had a clear vantage point down the hallway to the front door. From where she was she only saw Avery inside the apartment.

Rodriguez stated that Avery then took a few steps forward and "maced" [REDACTED] in

⁷ Rodriguez identified on DX 1 where she was in the apartment when the police first arrived with a green number one with a circle around it.

⁸ Rodriguez identified with a green dot on DX 1 the extent of how far she had seen the Respondent enter the apartment. The green dot was near the red number three that Madrid had indicated on DX 1.

⁹ The sofa that Rodriguez indicated was the same sofa that was previously indicated by Madrid.

the face. Madrid also got some of the "mace" on to his face and stepped away from [REDACTED] as a result. [REDACTED] began to scream because of the "mace" and he took a step forward whereupon Avery fired and shot [REDACTED]. Rodriguez was frozen in fear and had not moved before the shot was fired.

Rodriguez testified that after [REDACTED] had been shot, Avery tried to handcuff him, but [REDACTED] struggled with him. Avery began screaming for help, but the other officer was nowhere around. Madrid went and helped handcuff [REDACTED]. Madrid put one of his knees on [REDACTED]'s back and helped grab one of his arms, put it behind [REDACTED]'s back, and then Avery put the handcuffs on.

Rodriguez said that after [REDACTED] was handcuffed, she noticed that [REDACTED] was standing behind her and looked like she was going to pass out. Rodriguez did not want something to happen to [REDACTED] so she pushed her into the bathroom and told her to put some water on herself. Rodriguez grabbed a towel from the towel rack and went to put it on [REDACTED]'s shoulder because he was bleeding. Rodriguez called out to [REDACTED] to bring some water to rinse the "mace" from [REDACTED]'s face.

Rodriguez testified that a few minutes after that, other officers came into the apartment. Rodriguez stated that Avery started screaming at the Respondent, "Where the fuck were you? How could you do this to me? You're my partner."

Rodriguez said that during the incident, her children were in the playroom inside the apartment. The children did not see the shots because the door was closed. Rodriguez gave the police a statement that day. She did not have any ill will towards Avery for shooting her brother-in-law. Rodriguez felt bad for Avery because he was hysterical after he shot [REDACTED] and looked like he was about to cry. She said that while

Avery had shot [REDACTED] he "looked like he really didn't want to." She stated that Avery said, "I had no choice."

During cross-examination, Rodriguez acknowledged that she had gone to her sister-in-law's apartment after having gone to the pool. Rodriguez went there with her children and her boyfriend, Madrid. Rodriguez acknowledged that the argument started at her sister-in-law's apartment. [REDACTED] and [REDACTED] were arguing, but Rodriguez could not remember what they were arguing about because she was trying to ignore it. Rodriguez acknowledged that [REDACTED] had been drinking when she arrived at the apartment. The argument started in the living room and then escalated in the kitchen.

Rodriguez acknowledged that she had gone into the kitchen also. When Rodriguez went into the kitchen, she saw Madrid and [REDACTED] standing; Madrid was on top of [REDACTED] trying to take a knife out of his hand. [REDACTED] had been choking [REDACTED] and had a knife around her neck, but Madrid pulled [REDACTED] off her. Rodriguez saw Madrid push [REDACTED] against the window and then she went over and snapped off the blade of the knife. Rodriguez threw the blade out the window and then threw all the knives she saw in the kitchen out the window. [REDACTED] found either a screwdriver or a knife on top of the refrigerator and went after Madrid with it, but Madrid took it away from him. Rodriguez threw the object out the window.

Madrid then threw [REDACTED] on top of the table, which collapsed and broke into pieces. [REDACTED] then picked up a table leg and threatened Madrid with it. Rodriguez said that she picked up two table legs and stepped in front of Madrid and said, "You are not going to do anything." [REDACTED] did not try to do anything after that and he put the table leg down.

Rodriguez acknowledged that [REDACTED] left the kitchen, and that she stayed in the kitchen with Madrid. Rodriguez acknowledged that [REDACTED] called 911 from the living room. [REDACTED] grabbed his bag and was about to leave. Rodriguez agreed that as [REDACTED] was leaving, Avery came in through the door. [REDACTED] told Avery that he cannot be in the apartment without a warrant. Avery replied, "You called the police. I have the right to be here." Rodriguez agreed that the conversation between Avery and [REDACTED] occurred in the hallway leading to the living room.¹⁰ The hallway was about ten feet long.

Avery continued to walk into the apartment, and [REDACTED] backed up into the living room, to the left of two windows.¹¹ Rodriguez acknowledged that [REDACTED] was also in the apartment.¹² [REDACTED] then moved towards where the television was located. Madrid then tried to disarm [REDACTED] whereupon Avery walked forward within three feet of them and "maced" [REDACTED]. Avery then walked back to his original position.

Rodriguez testified that [REDACTED] began screaming, but she was not sure what he was screaming. Madrid moved away because he had some "mace" in his eyes. [REDACTED] took a step forward while he was screaming and then Avery fired one shot. Rodriguez acknowledged that [REDACTED] fell to one knee and the knife dropped out of his hand. Rodriguez said that she and [REDACTED] had not moved at this point. She denied that she moved from her spot and was in the playroom. The children were in the playroom at that time. Rodriguez and [REDACTED] were not in the bathroom, but they went there after [REDACTED] had been shot. Rodriguez agreed that someone would have to be blind to not have seen her in the room where the incident occurred.

¹⁰ The location of this conversation between Avery and [REDACTED] is indicated on DX 1 with a green letter "C".

¹¹ A green "C2" on DX 1 indicates the point where [REDACTED] had backed up to in the living room. A green dot between the kitchen door and sofa on DX 1 indicates where Avery went inside the apartment.

¹² A green letter "E" on DX 1 indicated where Eunice was standing.

Rodriguez said that she was not sure about the time that elapsed between when the shot was fired and until the other police officers arrived. After the shot was fired, [REDACTED] began screaming and looked as if she were going to faint. Rodriguez pushed [REDACTED] into the bathroom and put water on her face. Rodriguez then grabbed a towel and put it over [REDACTED]'s shoulder whereupon the other police officers arrived. Rodriguez acknowledged that before the other officers arrived, Avery had said he was sorry and that he had no choice. Rodriguez acknowledged that when the other officers arrived, [REDACTED] was already handcuffed. None of the other officers that arrived helped with the handcuffing. Rodriguez was not sure what happened to the knife after [REDACTED] had been shot.

Rodriguez acknowledged that prior to [REDACTED] being shot, she had only seen the Respondent stick his head in. Rodriguez disputed the notion that the Respondent came in together with Avery. Rodriguez admitted that she gave an oral statement to the Department on July 10, 2008 [Court's Exhibit (CX) 1]. Rodriguez had not read her recorded statement in a long time and she could not recall being asked the following questions and giving the respective answers:

Sergeant Malcolm: Do you know the names of these two officers?

Ms. Rodriguez: No, I don't.

Sergeant Malcolm: Can you describe them?

Ms. Rodriguez: One of the officers was Caucasian. He had blonde hair, but he doesn't have like a lot of hair, and he had blue eyes. The other officer was, I don't know, African-American. He had black hair. But the other officers came, when the first officer came in, he was with them.

Sergeant Malcolm: Which one was that?

Ms. Rodriguez: The Caucasian one. When he first came in, he was with him, but when everything went down, he wasn't there. Like I don't know where he went. Like

when we were trying to get the knife away from him and all that I didn't see where he went.

Rodriguez stated that she only remembered saying that the Caucasian officer entered and the second one just popped his head in. She denied saying that the two officers came in together. Rodriguez agreed that her memory of the incident was better in July 2008 when it had happened than the day of testimony because it was fresh in her mind. Rodriguez could not remember if she heard sirens when the second set of police officers arrived.

During redirect examination, Rodriguez said that when Avery entered the apartment, the Respondent stuck his head in right behind him. Rodriguez agreed that the Respondent was with Avery. During recross-examination, Rodriguez testified that when the Respondent looked in, [REDACTED] did not have a knife at that point.

Police Officer Michael Avery

Avery has been with the Department for five-and-a-half years. He is currently assigned to the 114 Precinct and has been there for four-and-a-half years. Avery worked in the 75 Precinct in East New York prior to the 114 Precinct. Avery was in the Army for eight years prior to joining the Department.

Avery said that on July 10, 2008, he was assigned to work in the Conditions Team at the 114 Precinct. The Conditions Team deals with quality of life enforcement, noise complaints, bars and clubs. It is generally a radio motor patrol (RMP) post, but Avery has been assigned to it as a foot post in the past. Avery testified that on the day of the incident he was assigned to an RMP and the Respondent was his partner that day.

Avery testified that he and the Respondent were called to respond to an incident

on [REDACTED] at around 1935 hours regarding an emotionally disturbed person (EDP) with a knife at about a block-and-a-half away from where they were. Avery declared that they put themselves on the scene over the radio. Avery stated that when first arriving on the scene, they were in a central courtyard and had to figure out what door was actually the building with the EDP. Avery said that when he approached, the door was locked and so they knocked on the window right next to the door. Avery stated that a female came down and opened the door for them. He did not require any assistance from other police officers to enter the building.

Avery testified that when he entered the building, he and the Respondent ran up to the third floor, found the apartment in question, and knocked on the door. Avery said the door swung open as he knocked because it was already slightly ajar. Avery then walked into the apartment and saw [REDACTED] who approached him with a plastic cup in his hand and slurred, "You guys have to have a warrant to come in here." Avery stated that he "kind of played it off like a joke" and replied, "Hey, sir, you know, you called us. I just want to make sure everything is okay. Is everybody all right?" The male did not say anything else, and instead turned around and went into the apartment; Avery followed.

Avery said he initially did not see anybody else, but when he entered into the apartment and crossed the threshold of the hallway he saw three other individuals: two females and one other male. When Avery entered the apartment, he looked to see if anyone had a weapon seeing that no one did, he called for a "slow down" over the radio because he did not want anyone getting hurt coming over to the apartment. Avery explained that he did not want anybody getting hurt if there was no immediate threat to human life. Avery had not looked behind him to see if anybody was there at that point.

Avery stated that [REDACTED] made his way to the window at which point, he put down his cup and grabbed a knife. [REDACTED] turned around and came towards him saying, "Shoot me, shoot me, shoot me." Avery drew his firearm and grabbed his radio. Avery was trying to get more police units there while telling [REDACTED] to drop the knife at the same time. Therefore, he transmitted over the radio the location and ordered [REDACTED] to drop the knife five or six times. The Respondent had not offered assistance during any of this. Madrid then interjected, which diverted [REDACTED]'s attention.

Avery then pulled out his Oleoresin Capsicum (OC) spray with his left hand and sprayed [REDACTED] with a full stream to his face in order to dissuade him from hurting anybody. Avery was in the small opening between the closet and refrigerator when he used the OC spray.¹³ Avery stated that the OC spray made [REDACTED] more enraged and [REDACTED] started coming towards him, shoving Madrid to the side. Avery was not sure if any of the spray hit Madrid, but they were right on top of each other -- not even a foot apart. Avery was six or seven feet away from [REDACTED] when he sprayed him. Avery said that the OC spray is designed to send a stream, but it never really does; Avery explained, "If I were to spray you directly, everybody around you would be effected [sic]."

Avery said that [REDACTED] came forward within four feet of him, still with a knife. Avery still had his firearm in his right hand and fired one round at [REDACTED] hitting him in his shoulder. When Avery fired the shot, he was two paces to the rear of where the sergeant is standing in the bottom photograph on page C3 of Respondent's Exhibit (RX) B. [RX B is a 13 page document showing 18 photographs taken on July 11, 2008 at the scene of the shooting.] Avery indicated that page C13 of RX B was a picture taken from near and with one's back to the refrigerator. Avery said that the distance between the

¹³ The area relative to DX 1 is where the 2'11" measurement reads.

couch and television on page C13 of RX B was approximately seven feet.

Avery testified that [REDACTED] then dropped the knife and fell to the ground. Avery said he kept his firearm on [REDACTED] and with his non-firing hand he used his radio to transmit that shots were fired. Avery considered the other family members in the apartment as threats because he did not know how they were going to react to [REDACTED] being shot. He also had not looked in the other rooms in the apartment. [REDACTED] tried to crawl back to the weapon so Avery kicked it away and jumped on him to attempt to place him in handcuffs. Avery did not see his partner there at this point. Avery not able to put [REDACTED] in handcuffs by himself because one of [REDACTED]'s arms was under both of them. Madrid came over and asked Avery if he wanted help and Avery responded in the affirmative. Avery testified that he picked up [REDACTED] and Madrid pulled his other arm out whereupon they put him in handcuffs. After [REDACTED] was handcuffed, Avery considered [REDACTED] as a neutralized threat.

Avery said that he stood up and a second or two later saw the Respondent come into the apartment from the main entrance with Police Officers Joshi and McGrath.¹⁴ Avery made a spontaneous utterance of, "Where the fuck were you? I needed you." The Respondent replied something along the lines of he had gone down to open the door for other officers.

Avery stated that either Joshi or McGrath suggested he go outside and they would stay with the evidence and the injured person. Avery did so and sat on the steps leading up to the rooftop. Two other officers from the Conditions Team, Police Officers George and Rezza, also came up to make sure Avery was okay and then went in to secure the crime scene and evidence until Sergeant Corideo arrived.

¹⁴ Avery indicated that the Respondent entered from the red number three on DX 1.

Avery testified that he went to the hospital afterwards to be treated for tinnitus, ringing in the ear. While Avery was in the ambulance, he spoke to his delegate about what had occurred in similar detail as his present testimony. The Respondent was also present during the conversation with his delegate. Avery testified that on the day of the shooting he needed the Respondent's help and that the Respondent was not there for him.

During cross-examination, Avery agreed that there are certain judgments a police officer has to exercise. Avery agreed that these include when to take out one's weapon, whether one's life is being threatened, whether to use "mace," and whether to fire one's weapon. Avery agreed that these judgments are often second-guessed by a lot of people, such as by boards that determine whether an officer fired correctly, if "mace" was used properly, or if sufficient force was used under certain circumstances. Avery agreed that it was fair to say that assuming the Respondent went down to open the door to protect him, it would be a judgment call on the Respondent's part – whether it was a good judgment or not, it was a call that somebody made at the spur of the moment. Avery admitted that he made judgment calls on that day.

Avery admitted that he would not have handled the situation the way the Respondent had. Avery never had any problems with the Respondent before. Avery worked with the Respondent for approximately a month-and-a-half before the incident. He had a very good relationship with the Respondent and had never had any fights or arguments with him. Avery was not aware of any animosity between them. He acknowledged that in the course of working with the Respondent, they had made arrests together: marijuana arrests, cocaine arrests, disorderly conduct arrests, and assault arrests. Avery acknowledged that the Respondent acted properly during those arrests and

that he had no problems with him. He said that he had not pulled out his weapon during those arrests.

Avery acknowledged that he and the Respondent responded to the scene of an EDP. At the time Avery responded to the scene it was light out because it was 1930 hours in the summer. Avery acknowledged that he located the particular door for the apartment because there was an address on that door. Avery acknowledged that determining which door belonged to the apartment required some kind of deduction. The building entrance led to a courtyard and he had to go to the center whereupon he noticed that as the doors went to the left, the numbers went down. Avery acknowledged that he was able to determine the correct door for the building. Avery also acknowledged that he tried to open the door by pulling on and turning the handle. Furthermore, he acknowledged that he pushed on the door hard because there was a call about an EDP with a knife and it was important to gain access. Avery admitted that he was not initially able to gain access and so he banged on the door and the window right next to the door for 45 seconds to a minute. He agreed that a minute was a very long time especially if there is a call about an EDP. Avery acknowledged that someone from inside let him.

Avery acknowledged that after the door was opened he went up three flights of stairs, approximately 45 stairs. Avery went up first and did not hear the Respondent walking behind him and he did not know if the Respondent was or was not walking behind him. Avery acknowledged that when he knocked on the front door of the apartment, the door swung open and he saw the EDP with a drink in his hand. Avery went inside the apartment after talking to [REDACTED] Avery initially followed [REDACTED] to the opening of the living room, stopping approximately two paces behind where the sergeant

in C3 of RX B is standing. From where Avery was standing, he could not see down the hallway because of a wall. He did not know whether someone in the hallway could see him. Avery backed up one pace into the kitchen and then he fired his weapon. At this time he did not know if anybody was in the hallway.

Avery stated that [REDACTED] had walked over to the window and picked up a knife. Avery testified that Madrid was initially sitting on a couch in the living room until [REDACTED] picked up the knife. To the best of Avery's recollection, Madrid approached [REDACTED] and told him to drop the knife. Avery did not see Madrid touch or hold [REDACTED]. Avery acknowledged that he sprayed the OC spray while [REDACTED] was talking to Madrid. Avery said that after spraying [REDACTED] Madrid moved away either because he was hit with some of the OC spray or because [REDACTED] pushed him. He admitted that the weapon came closer to him and therefore, he fired a shot. Avery admitted that up until he fired the shot, he could not say that the Respondent was not in the apartment.

Avery said that before he fired the shot he made numerous broadcasts over the radio. The first was a "slow down" because he did not see anyone with a weapon. The next broadcast was Avery yelling the address of the location to try and get more police units on the scene and also yelling at [REDACTED] to drop the knife. Avery acknowledged that this was also an effort to get responding units to speed up their response again. Avery could not recall how long afterwards he fired the gunshot nor could he recall the time that elapsed from the point he entered the apartment to the time of the shooting. Avery did not engage in any hand-to-hand combat with [REDACTED] and the closest [REDACTED] got to him was about three feet, which was when he entered the apartment. Avery shot [REDACTED] from four to five feet, near the entrance to the kitchen.

Avery agreed that it was hectic in the location with people screaming and a lot of noise. Avery did not hear sirens, but he was not concentrating on that. Avery acknowledged that [REDACTED] fell to the ground and dropped the knife. Avery acknowledged that he kicked the knife away after a couple of seconds. Before Avery kicked the knife he was broadcasting that shots had been fired and an ambulance was needed. Avery acknowledged that there came a point where he saw the Respondent come back in. Avery said he saw the other responding officers come in a couple of seconds behind the Respondent. He admitted that he had heard from other officers that the Respondent had gone downstairs to open the door for these other officers, but the door locked again and somebody else had to let them in. Avery could not recall who had told him this.

Upon questioning by the Court, Avery said he could not say whether the Respondent was in the living room because he was not focused on him. Avery said if the Respondent was in the living room area, he would have seen him. Avery explained that he had a "pretty good view of the rest of the living room." Avery admitted that he could not see into the hallway and the Respondent could have been there.

The Respondent's Case

The Respondent called forth Sergeant Joseph Corideo and Police Officers Brendan McGrath and Ankur Joshi as witnesses. The Respondent also testified on his own behalf.

RX A is the transcript of the Department interview of [REDACTED] regarding the shooting that occurred on July 10, 2008. The interview was conducted on July 10, 2008 by Sergeant Malcolm and Lieutenant Helmick. During the interview, [REDACTED] stated

that Avery and the Respondent initially both came into the apartment. Eunice then stated that the Respondent was not around while Avery was engaging [REDACTED] in conversation to calm him down. [REDACTED] said the Respondent appeared from having gone downstairs after [REDACTED] had been shot.

Sergeant Joseph Corideo

Corideo has been with the Department for 18 years. Corideo stated that on July 10, 2008, he was working as a patrol supervisor working a 1450 by 2347 hours tour. Corideo is normally the Conditions Team sergeant in the 114 Precinct, but on July 10, 2008, he had all the members of third platoon under his supervision because he was working patrol. Corideo knew both Avery and the Respondent and they were under his command that day. Corideo had assigned them to a detail on [REDACTED], in a park.

Corideo stated that a job came over the radio for a "10-54, an EDP with a knife." Avery and the Respondent replied that they would respond because they were right down the road. Corideo heard them radio in that they were present at the job, and that they may have said, "no further [units required]." Immediately after the "no further," Corideo heard Avery scream over the radio something that indicated that they needed help. Two minutes had elapsed from the time that Corideo had assigned the job until the request for help came in.

Corideo said that he was already responding to the call anyway, so he continued to proceed to the location. Corideo had to respond because he, as a sergeant, was technically assigned the job and Avery and the Respondent only "picked it up." Corideo stated that he was responding with "lights and sirens" even before the transmission

because he was a "good amount of distance away from the location." When he got to the location there were other police cars there. He was able to get in through the front door because one of the officers must have chocked the door with something, but he could not recall what was used. Corideo said that based on having worked in the precinct a long time, the doors in the area lock when they are closed and cannot usually be pushed open by hand.

Corideo said that when he arrived upstairs, he saw the perpetrator on his knees, handcuffed and guarded by Rezza and George. He also saw the Respondent holding a knife. Corideo stated that the knife was vouchered and the perpetrator was placed under arrest.

During cross-examination, Corideo acknowledged that he heard Avery make a radio transmission while in the apartment. Corideo could not recall what Avery was saying over the radio. He did not hear a radio transmission made by the Respondent. McGrath made a radio transmission that a shot was fired.

Upon questioning by the Court, Corideo said that he did not personally check the front door of the building to see if the lock worked or not.

Police Officer Brendan McGrath

McGrath stated that on July 10, 2008 at approximately 1945 he responded to a location at the direction of his supervisor. McGrath was accompanied by Joshi. McGrath said that when they arrived at the location, the front door was locked shut and they were not able to get in. McGrath was 5'9" tall and weighed about 185 pounds. McGrath said that when he arrived on the scene a civilian had to open the door for them. After the

civilian opened the door for them, a shot was fired and he exited the building and took cover. They then tried to go back into the building, but they could not get access inside right away because the door was locked. The Respondent came running down and let them into the building the second time. The Respondent opened the door from the inside of the building. McGrath did not see the Respondent in the lobby of the building the first time he entered.

During cross-examination, McGrath said that when the Respondent opened the door for him, the Respondent did not stay there to make sure McGrath entered. McGrath acknowledged that the door wound up closing on him and therefore, a civilian who had run out of the building, let them back in.

During redirect-examination, McGrath said that the Respondent ran up the flight of stairs. McGrath reiterated that he turned around to see if Joshi was behind him. McGrath said that Joshi was not behind him and then the door closed. It was fair to say that there was no way to gain access to the premises unless one had a key or somebody opened the door.

During recross-examination, McGrath testified that he had no independent knowledge of what actually transpired inside the apartment. McGrath did not know what actions or inactions anybody took in the apartment.

On redirect, McGrath reiterated that he did know that he could not gain access to the building without somebody opening the door for him. He could not recall if he had responded to the call with "lights and sirens."

Police Officer Ankur Joshi

Joshi testified that on he was working July 10, 2008 at approximately 1945 hours, and his partner at that time was McGrath. Joshi heard Avery make a communication about an EDP. Joshi said that the call was a "10-85" indicating that another officer needed help. Joshi got the address from the dispatcher and responded to the location. Joshi testified that besides Avery's car, his car was the first to arrive.

Joshi said that when they got to the building, they could not get in because the door was locked. Joshi tried to pull on the door, but he could not open it. Joshi knew the importance of gaining access at that time because an officer needed help. A civilian eventually did open the door, at which point a shot rang out as they were in the vestibule area of the building. Prior to hearing the shot, Joshi did not see the Respondent anywhere. Joshi testified that after the shot, civilians were running down the steps and they were unsure if there was a perpetrator running down, so he and his partner exited the building for cover. Joshi said they took cover right around the corner of the building.

Joshi testified that they waited a couple of seconds and then went back to the door to try and gain entry. Joshi said they were still the sole responding unit and that no other police cars arrived yet. Joshi said that they started banging on the door and yelling, "Police." The purpose of this was to tell people that the police had arrived. The Respondent then came down the staircase and opened the door from the inside. The Respondent opened the door and ran back up. Joshi said that his partner turned to look for him and the door shut on him and therefore, a civilian from the street opened the door for them the second time. Ten seconds elapsed from the time the Respondent opened the door until the civilian opened up the door after it shut. When Joshi got up to the

apartment, he was talking to Avery to make sure he was okay. The EDP was in handcuffs and on the floor.

During cross-examination, Joshi said that depending on the emergency, he was trained in the Police Academy to break the glass on the door to gain entry and fill out the proper paperwork to get it replaced afterwards. Joshi said that he would have done something similar if he could not get in after some period of time. Joshi admitted that he was going to get in the building one way or another and that he was not going to just walk away. During redirect examination, Joshi said he could not recall if the door had any glass.

Upon questioning by the Court, Joshi stated that the first time he tried to gain entry to the building a person came to open the door "right away." The Respondent arrived about ten seconds from the time he got back to the door to make the second entry. The third time was also about ten seconds after. It was fair to say that after Joshi finally gained access into the building, he went up the staircase ten seconds after the Respondent.

The Respondent

The Respondent has been with the Department for four-and-a-half years and is currently assigned to VIPER 13. His first assignment was six months with a Field Training Unit in the 115 Precinct where he performed quality of life foot posts. After that, the Respondent went to the 114 Precinct where he worked in a specialized unit addressing quality of life conditions. The Respondent explained that as opposed to being on regular patrol, his unit specialized in summonsing people drinking, handling noise complaints, and also making drug arrests for marijuana and cocaine. The Respondent has

made 102 arrests while on the job for assaults, drugs, and weapons. He denied ever being accused of being a coward on the job.

The Respondent said that on July 10, 2008, Avery was assigned as his partner. The Respondent had worked with Avery for two months before the incident and had made approximately 25 to 30 arrests with him for drugs, assaults, and disorderly conduct. There had not been an argument, fight, or any bad feelings between Avery and the Respondent. On that day, the Respondent and Avery were working in uniform in a marked car. The Respondent was the driver and Avery was the recorder. The Respondent was going to a detail when he received a radio call about responding to an EDP. The Respondent said that they radioed back that they would take the job.

The Respondent said that when they got to the location, they were not able to immediately gain entry to the building. The Respondent explained that the door was locked and so they had to knock on the window of the first floor apartment and knock on the door [RX B page 8 – the window being referred to is marked with an “X”]. After knocking, a man came down and opened the door. Avery ran upstairs first and the Respondent was right behind him; they ran to the third floor. Avery knocked on the front door of the apartment, which was opened slightly.

The Respondent said Avery pushed the door and walked four to five feet into the apartment, going past the foyer.¹⁵ The Respondent was right behind Avery. When they entered the apartment, [REDACTED] approached them and said that they needed a warrant. Avery told [REDACTED] that somebody called and they came to see if everything was okay. At that time he could see two females in the apartment sitting on the couch, opposite the

¹⁵ A black “X1” on DX 1 indicates where Avery was located upon initially entering the apartment according to the Respondent.

television [RX B page 12 – the couch being referred to is marked with an “X”]. Avery then radioed that there was an intoxicated male. At that point in time, no one had a weapon, no fights were going on, and no one was threatening any other individual. Avery was talking to the two females sitting on the couch while [REDACTED] was walking back towards the window.

The Respondent stated that when [REDACTED] got to the window, [REDACTED] picked up a knife. The Respondent testified that when he saw the knife, he yelled, “Avery, knife.” Madrid was also in the apartment, next to [REDACTED] the entire time.¹⁶ The Respondent then backed up to the entrance of the foyer.¹⁷ Avery then turned to face [REDACTED] and pulled out his firearm. The Respondent did not pull out his weapon because he did not have a clear shot. Madrid told [REDACTED] to put the knife down and then grabbed him. Avery did not do something with respect to “mace” before pulling out his firearm. Avery told [REDACTED] to put the knife down and at the same time was radioing a “10-85,” asking for assistance. While Avery was doing this, he (Avery) was telling [REDACTED] to put the knife down and that everything would be okay. Madrid was also asking them not to shoot [REDACTED] because [REDACTED] had just not taken his medication.

The Respondent testified that Avery then “maced” [REDACTED] from five to seven feet away while Madrid was holding him. After [REDACTED] was “maced,” [REDACTED] pushed Madrid away and then he moved toward Avery with the knife. Avery then shot [REDACTED]. After Avery shot [REDACTED] dropped the knife and fell to the floor. Avery kicked the knife and continued to point his gun at [REDACTED].

The Respondent testified that before this, he had heard sirens of other cars

¹⁶ A black “P” and “B” indicate where [REDACTED] and Madrid were inside the apartment respectively according to the Respondent.

¹⁷ A black “X3” indicates where the Respondent testified he backed up to.

approaching. The Respondent said that when [REDACTED] was on the ground, he ran downstairs in order to let in the other officers being that he and Avery had problems trying to enter the building initially. When the Respondent arrived downstairs, he saw Joshi and McGrath and opened the door for them. He did not know what was transpiring upstairs between [REDACTED] and Avery while he was going downstairs. The Respondent went right back upstairs and did not know what happened with Joshi and McGrath with regard to the door.

The Respondent said that when he got upstairs, he saw Avery and Madrid handcuffing [REDACTED]. The Respondent secured the knife and then Avery asked, "Where the fuck were you?" The Respondent told Avery that he had gone downstairs to let the other officers in. The Respondent declared that when he went downstairs he did not think he was placing Avery in danger. The Respondent explained that his reason for going downstairs was to let more officers into the apartment because he and Avery needed assistance.

During cross-examination, the Respondent acknowledged that he heard the testimony of Rodriguez and Madrid. The Respondent disputed the testimony of Rodriguez and Madrid that he was never in the apartment until after the shooting. The Respondent acknowledged that he came all the way into the apartment. The Respondent acknowledged that a civilian opened the building door for him, not another police officer. The Respondent acknowledged he previously had stated that he had instructed Madrid to take the knife away from [REDACTED]. The Respondent stated that this was after he yelled, "Avery, knife." The Respondent explained that [REDACTED] and Madrid were not fighting, but talking and so he thought it was okay to have Madrid disarm [REDACTED]. The Respondent

agreed that in this situation, it was appropriate to tell a civilian to disarm another civilian. The Respondent acknowledged that there was a time when he was near the doorway and held open the apartment door with a mat. The Respondent said he had done this before the shooting and "macing," but after Madrid grabbed [REDACTED]

The Respondent denied that he was by the door or outside the door when he heard the gunshot. The Respondent acknowledged that during an official Department interview he had said that he was by the door when he had heard the gunshot. The Respondent acknowledged that when he went downstairs, [REDACTED] was on the floor and Avery still had his gun drawn. The Respondent admitted that [REDACTED] was not handcuffed when he ran downstairs. Furthermore, he admitted that he did not have any way of knowing who was in the other rooms of the apartment or if [REDACTED] was in custody when he ran downstairs. The Respondent decided to go downstairs because he heard banging on the door downstairs and the third floor bell ringing.

The Respondent acknowledged that when he went downstairs he saw Joshi and McGrath at the door and that he opened the door and ran back upstairs; he did not make sure Joshi and McGrath were able to get in through the door. The Respondent agreed that in order to go downstairs, he had to leave Avery alone. When he got back upstairs, the Respondent saw that Avery had one handcuff on [REDACTED] and that Madrid and Avery were placing the second handcuff on the other arm. The Respondent explained that he did not help because he thought [REDACTED] and Madrid had the situation already under control.

The Respondent testified that the knife was in his hand. During an official Department interview, Captain McBride asked the Respondent, "What did you do

immediately? You pick up this knife, right? Your partner, your brother [officer], and the perpetrator were rolling around on the floor fighting, that's correct?" The Respondent answered, "Yeah."¹⁸ The Respondent denied that when he picked up the knife, Avery and Madrid were still rolling around on the ground fighting with [REDACTED]. The Respondent acknowledged that he was trained at the Police Academy to never leave his partner alone in a dangerous situation. The Respondent said that he did not think he had left Avery in a dangerous situation.

During redirect examination, the Respondent said that he went to the door to put a mat to keep the door open because that was something they always did for their protection. The Respondent stated that this was taught to him in the Police Academy.

FINDINGS AND ANALYSIS

At about 1935 hours on July 10, 2008, the Respondent and his partner, Avery, responded to a call regarding an EDP with a knife. They were the first on the scene. They found the building and had some difficulty gaining access to the main entrance. They knocked on a nearby apartment window to get someone to open the door, which took a little less than a minute according to Avery. They went up to the apartment on the third floor. A person [REDACTED] who turned out to be the EDP, approached Avery. Avery entered the apartment and followed [REDACTED] through a foyer and into the living room. There were three other people in that room, [REDACTED]'s brother Jason Madrid, his sister [REDACTED] and Madrid's girlfriend Erika Rodriguez.

Because he did not see any knife and the situation appeared to be calm Avery

¹⁸ The Respondent's counsel stipulated that the Department read the transcript of the official Department interview correctly.

called over the radio to tell other units to slow down in their response.

[REDACTED] then went over to the window where he grabbed a knife and started to approach Avery saying, "Shoot me, shoot me." Avery drew his weapon and went over the radio again, this time calling for help. [REDACTED]'s brother, Madrid, got between them and Avery used his OC spray on [REDACTED]. That did not work and only enraged [REDACTED]. Avery then shot [REDACTED] hitting him in the shoulder.

Avery went over the radio to report that shots had been fired. He saw that [REDACTED] was again going for the knife so he jumped on him and attempted to place him in handcuffs. Avery easily handcuffed one hand but was having trouble with the second and Madrid helped him subdue [REDACTED].

Just after the shot was fired the Respondent ran down the stairs. He said he did this to open the front door for other units arriving, and he then went back upstairs.

The facts above are, essentially, undisputed. Facts that are in dispute involve the Respondent's action before the shooting. The Respondent claims that he came into the living room with Avery and helped try to calm [REDACTED] down before the shooting. However the three independent witnesses, Madrid, [REDACTED] and Rodriguez all essentially say that he was nowhere to be found and that he merely put his head into the entrance door at the beginning of the incident and did nothing further. Avery also indicated that he did not know where the Respondent was during the incident.

This Court finds that the Respondent did not enter the living room during the incident. The evidence of that is based not only on the testimony of the various witnesses who did not see him there but also based on the photograph which shows a rather crowded space in which it would have been difficult for the Respondent to have fit with

the other actors, Avery, [REDACTED] and Madrid, as he claimed.¹⁹

The Respondent is charged with “failing to properly assist his partner.” Counsel for the Respondent has argued that the charge is vague in that it does not specify what the Respondent failed to do or should have done. He noted the delay that arriving units had in getting the building door open and claimed that the decision to go downstairs and open that door was a legitimate judgment call and that the charge is, in effect, second-guessing the Respondent. He claimed that even if it was a bad judgment call, it was not misconduct.

This Court disagrees with these arguments. Under the circumstances of this case, the charge is clear and detailed; he failed to provide assistance.

The Respondent claims that at one point he was wedging the apartment door open. This would have been acceptable conduct during the very early part of the incident when no knife was visible and Avery called and told other units to slow down in their response. Once the situation heated up and Avery was calling out for help over the radio, the Respondent needed to be a visible police presence in the living room. It is unknown what might have happened had he been there, but, his presence could well have been the extra “show of force” needed to persuade [REDACTED] to peaceably comply with orders.

The Respondent’s decision to run downstairs after the gunshot and before [REDACTED] was fully subdued is even more striking. The Respondent admitted that when he left the apartment, [REDACTED] was not yet handcuffed. When he got back upstairs and saw that Avery had only one handcuff on [REDACTED] he still did not attempt to help his partner. Instead, it was Madrid, the EDP’s brother, who assisted Avery in subduing and handcuffing [REDACTED]

¹⁹ A “not to scale” diagram was received in evidence and utilized during testimony. Unfortunately that diagram makes the living room appear to be much larger than it is and the furniture much smaller. It is misleading and the photographs offer a better perspective of the room and its furnishings.

This was an extremely dangerous situation that called for immediate police action. Yet, the Respondent did not think he had left Avery in a dangerous situation and did not think his absence had placed his partner in danger.

Just as significant was the fact that he left Avery alone with the family of the person Avery had just shot. This left Avery in an extraordinarily unpredictable and perilous situation. This was not merely a bad judgment call but an abrogation of responsibility.

Every unit that had to get in through the front door to get into the building managed to do so, within a matter of seconds, and the Respondent should have realized that the door was, at best, a limited barrier. The immediacy of the situation required a police presence in the apartment with Avery.

In both situations with this incident the Respondent failed to take appropriate police action. His conduct endangered civilians and his partner. It is actionable misconduct to avoid police work. The Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 9, 2006. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

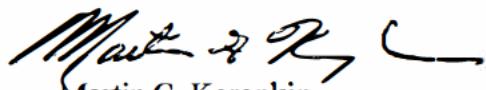
The Department has asked that the Respondent be dismissed. The conduct of the Respondent, in which he basically abandoned his partner, goes directly to the heart of

police work. The ability of each officer to rely on his or her partner in a difficult situation is critical to the function of officers on patrol and in other potentially dangerous situations. As a result of this incident, other officers will find it difficult to work with the Respondent in a situation which may endanger him as well as them. It might also endanger members of the public relying on this Department.

It is also worth noting that this incident occurred very early in the Respondent's career: He was roughly two years out of the Police Academy at the time of the incident. It is certainly an indication that the Respondent is unsuited for a long-term career in police work.

Consequently, this Court concludes that the appropriate penalty is that the Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

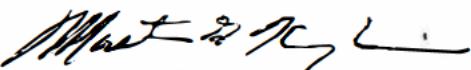
From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER STANLEY SAMEDY
TAX REGISTRY NO. 940694
DISCIPLINARY CASE NO. 85346/09

The Respondent received an overall rating of 4.0 "Highly Competent" on his most recent annual performance evaluation. He has no [REDACTED] or formal disciplinary record.

For your consideration.



Martin G. Karopkin
Deputy Commissioner Trials